

# HOUSE BILL No. 1376

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 7.1-3; IC 7.1-4; IC 7.1-5; IC 35-52-7-30.5.

**Synopsis:** Beer and liquor wholesalers. Allows a beer and wine wholesaler to wholesale liquor if: (1) the wholesaler pays a \$4,000 fee; and (2) the wholesaler's primary source of supply for liquor has been the wholesaler's primary source of supply for beer or wine for at least three years preceding the selling of liquor to the wholesaler. Allows a liquor and wine wholesaler to wholesale beer if: (1) the wholesaler pays a \$4,000 fee; and (2) the wholesaler's primary source of supply for beer has been the wholesaler's primary source of supply for liquor or wine for at least three years preceding the selling of beer to the wholesaler. With certain exceptions, makes it a Class B misdemeanor for a primary source of supply for liquor to terminate its relationship, in whole or in part, with a liquor wholesaler for the purpose of transferring one or more brands of liquor to a beer wholesaler authorized to distribute liquor.

**Effective:** July 1, 2016.

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**Dermody, Bartlett**

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January 19, 2016, read first time and referred to Committee on Public Policy.

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Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## HOUSE BILL No. 1376

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 7.1-3-2-9 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 9. An out-of-state  
3 brewer holding either a primary source of supply permit or an  
4 out-of-state brewer's permit may:

5 (1) appoint a beer wholesaler **or a liquor wholesaler that**  
6 **wholesales beer under IC 7.1-3-8-3.5** to perform the services

7 described in IC 7.1-3-3-5(f)(1) through IC 7.1-3-3-5(f)(2); and

8 (2) provide a fee to a beer wholesaler **or a liquor wholesaler that**

9 **wholesales beer under IC 7.1-3-8-3.5** who performs the services

10 described in IC 7.1-3-3-5(f)(1) through IC 7.1-3-3-5(f)(2).

11 SECTION 2. IC 7.1-3-3-5.5 IS ADDED TO THE INDIANA CODE  
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
13 1, 2016]: Sec. 5.5. (a) **This section applies only to a beer wholesaler**  
14 **that also holds a wine wholesaler's permit.**

15 (b) **Notwithstanding any other provision of this title, a beer**  
16 **wholesaler may:**

17 (1) **purchase and import liquor from a primary source of**



1           supply; and  
 2           (2) possess liquor and sell liquor at wholesale;  
 3       if the primary source of supply or any subsidiary or affiliate of the  
 4       primary source of supply for liquor has been the wholesaler's  
 5       primary source of supply for beer or wine for at least three (3)  
 6       consecutive years immediately preceding the selling of liquor to the  
 7       wholesaler.

8       (c) A beer wholesaler that wholesales liquor under this section  
 9       may not:

10           (1) be required by the commission to apply for or maintain a  
 11           liquor wholesaler's permit; or

12           (2) keep or store liquor at a place other than the premises  
 13           described in the application and permit for the beer  
 14           wholesaler's permit.

15       (d) A beer wholesaler to whom this section applies is subject to  
 16       IC 7.1-3-8-3 and any other law or rule of the commission  
 17       applicable to the holder of a liquor wholesaler's permit as to the  
 18       beer wholesaler's sale of liquor to the extent the law or rule does  
 19       not conflict with this section.

20       SECTION 3. IC 7.1-3-8-3.5 IS ADDED TO THE INDIANA CODE  
 21       AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 22       1, 2016]: Sec. 3.5. (a) This section applies only to a liquor  
 23       wholesaler that also holds a wine wholesaler's permit.

24       (b) Notwithstanding any other provision of this title, a liquor  
 25       wholesaler may:

26           (1) purchase and import beer from a primary source of  
 27           supply; and

28           (2) possess beer and sell beer at wholesale;

29       if the primary source of supply or any subsidiary or affiliate of the  
 30       primary source of supply for beer has been the wholesaler's  
 31       primary source of supply for liquor or wine for at least three (3)  
 32       consecutive years immediately preceding the selling of beer to the  
 33       wholesaler.

34       (c) A liquor wholesaler that wholesales beer under this section  
 35       may not:

36           (1) be required by the commission to apply for or maintain a  
 37           beer wholesaler's permit; or

38           (2) keep or store beer at more than one (1) licensed premises.

39       (d) A liquor wholesaler to whom this section applies is subject  
 40       to IC 7.1-3-3-5 and any other law or rule of the commission  
 41       applicable to the holder of a beer wholesaler's permit as to the  
 42       liquor wholesaler's sale of beer to the extent the law or rule does



1 **not conflict with this section.**

2 SECTION 4. IC 7.1-3-25-0.5 IS ADDED TO THE INDIANA  
3 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
4 [EFFECTIVE JULY 1, 2016]: **Sec. 0.5. As used in this chapter, "beer**  
5 **wholesaler" includes a liquor wholesaler that wholesales beer**  
6 **under IC 7.1-3-8-3.5.**

7 SECTION 5. IC 7.1-4-2-1.5 IS ADDED TO THE INDIANA CODE  
8 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
9 1, 2016]: **Sec. 1.5. As used in this chapter, "beer wholesaler"**  
10 **includes a liquor wholesaler that wholesales beer under**  
11 **IC 7.1-3-8-3.5.**

12 SECTION 6. IC 7.1-4-3-7 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) All sales of  
14 alcoholic beverages made by a primary source of supply to a liquor  
15 wholesaler **or to a beer wholesaler that wholesales liquor under**  
16 **IC 7.1-3-3-5.5** shall at the time of the sale be accompanied by an  
17 invoice that must show the following:

- 18 (1) The name and address of the seller and the purchaser.
- 19 (2) The date of disposition.
- 20 (3) The name or names of each brand sold.
- 21 (4) The number of packages, if any.
- 22 (5) The number of cases by size of bottle.
- 23 (6) The quantity of each kind of alcoholic beverage sold.

24 (b) The primary source of supply shall send a copy of the invoice to  
25 the department of revenue and the commission at the time of the sale.

26 SECTION 7. IC 7.1-4-4.1-13, AS AMENDED BY P.L.165-2006,  
27 SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
28 JULY 1, 2016]: Sec. 13. (a) This section applies to the following  
29 permits:

- 30 (1) Beer wholesaler's permit.
- 31 (2) Malt wholesaler's permit.
- 32 (3) Liquor wholesaler's permit.
- 33 (4) Wine wholesaler's permit.

34 (b) Except as provided in ~~subsection~~ **subsections (c) and (d)**, a  
35 permit fee of two thousand dollars (\$2,000) is annually imposed for the  
36 issuance of each of the permits described in subsection (a).

37 (c) A permit fee of one hundred dollars (\$100) is annually imposed  
38 for the issuance of a wine wholesaler's permit to a permit applicant  
39 who:

- 40 (1) has never previously held a wine wholesaler's permit and  
41 anticipates selling less than twelve thousand (12,000) gallons of  
42 wine and brandy in a year; or



(2) previously held a wine wholesaler's permit and certifies to the commission that the permit applicant sold less than twelve thousand (12,000) gallons of wine and brandy in the previous year.

**(d) A permit fee of four thousand dollars (\$4,000) is annually imposed for the issuance of:**

**(1) a beer wholesaler's permit for a beer wholesaler that wholesales liquor under IC 7.1-3-3-5.5; or**

**(2) a liquor wholesaler's permit for a liquor wholesaler that wholesales beer under IC 7.1-3-8-3.5.**

SECTION 8. IC 7.1-5-5-7, AS AMENDED BY P.L.159-2014, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) It is unlawful for a permittee in a sale or contract to sell alcoholic beverages to discriminate between purchasers by granting a price, discount, allowance, or service charge which is not available to all purchasers at the same time. However, this section does not authorize or require a permittee to sell to a person to whom the permittee is not authorized to sell under this title.

(b) A premises that operates at least two (2) restaurants that are separate and distinct from each other on the same premises may provide for a different schedule of prices in each restaurant if each restaurant conforms to all other laws and rules of the commission regarding pricing and price discrimination in its separate and distinct areas.

(c) This section does not apply to the holder of a gaming site permit that complies with IC 7.1-3-17.5-6.

(d) Notwithstanding subsection (a), a beer wholesaler **or a liquor wholesaler that wholesales beer under IC 7.1-3-8-3.5** may offer a special discount price to a beer dealer or beer retailer for beer or flavored malt beverage, if the beer or flavored malt beverage:

(1) is a brand or package the beer wholesaler has discontinued; or

(2) will expire in not more than:

(A) twenty (20) days for packaged beer or packaged flavored malt beverage; and

(B) ten (10) days for draft beer or draft flavored malt beverage.

(e) The special discount under subsection (d) only applies to beer or flavored malt beverage that will expire and be subject to removal from retailer or dealer shelves in accordance with the primary source of supply's coding data clearly identified on the container.

(f) Any beer or flavored malt beverage sold at a special discount price under subsection (d) shall be accompanied by an invoice clearly designating, in addition to all other information required by law, all the



following information:

(1) The date of delivery.

(2) The expiration date of each brand, package type, and quantity delivered.

(3) The per unit price for each package.

(g) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 9. IC 7.1-5-5-9, AS AMENDED BY P.L.159-2014, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 9. (a) This section does not apply to product management (as described in 905 IAC 1-5.2-15) by a permittee.

(b) It is unlawful for a permittee to coerce, or attempt to coerce, or persuade another permittee to enter into an agreement, or to take an action, which would violate a provision of this title or of the rules and regulations of the commission.

(c) It is unlawful for a beer wholesaler, **a liquor wholesaler that wholesales beer under IC 7.1-3-8-3.5**, or a primary source of supply to cancel or terminate an agreement or contract between **a beer the** wholesaler and a primary source of supply for the sale of beer, unfairly and without due regard for the equities of the other party.

(d) A person who knowingly or intentionally violates subsection (b) or (c) commits a Class B misdemeanor.

SECTION 10. IC 7.1-5-5-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 9.5. (a) **It is unlawful for a primary source of supply for liquor to terminate its relationship, in whole or in part, with a liquor wholesaler for the purpose of transferring one (1) or more brands of liquor to a beer wholesaler authorized to distribute liquor under IC 7.1-3-3-5.5. A person who knowingly or intentionally violates this subsection commits a Class B misdemeanor.**

(b) **A primary source of supply does not violate subsection (a) if the brand or brands are transferred to the beer wholesaler not later than:**

**(1) ninety (90) days after the date the primary source of supply for liquor acquired the rights to market, distribute, own, or import the brand or brands to be transferred to the beer wholesaler; or**

**(2) October 1, 2016;**

**whichever is later.**

(c) **Subsection (a) does not apply to any brand or brands of liquor that were not sold or distributed to the holder of a liquor**



1 **wholesaler's permit in Indiana before January 1, 2006. This**  
 2 **subsection expires October 1, 2017.**

3 SECTION 11. IC 7.1-5-9-3, AS AMENDED BY P.L.79-2015,  
 4 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 5 JULY 1, 2016]: Sec. 3. (a) This section applies to a brewer that  
 6 manufactures, in aggregate, more than ninety thousand (90,000) barrels  
 7 of beer in a calendar year for sale or distribution within Indiana.

8 (b) It is unlawful for the holder of a brewer's or beer wholesaler's  
 9 permit to have an interest in a liquor permit of any type under this title.  
 10 **However, this section does not prohibit the holder of a beer**  
 11 **wholesaler's permit from wholesaling liquor under IC 7.1-3-3-5.5.**

12 (c) A person who knowingly or intentionally violates this section  
 13 commits a Class B misdemeanor.

14 SECTION 12. IC 7.1-5-9-4, AS AMENDED BY P.L.159-2014,  
 15 SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 16 JULY 1, 2016]: Sec. 4. (a) Except as provided in IC 7.1-3-3-4 **and**  
 17 **subsection (c)**, an applicant for a beer wholesaler's permit shall have  
 18 no interest in the following:

19 (1) A permit to manufacture or to sell at retail alcoholic beverages  
 20 of any kind.

21 (2) Any other permit to wholesale alcoholic beverages.

22 (3) Through stock ownership or otherwise, a partnership, limited  
 23 liability company, or corporation that holds:

24 (A) a permit to manufacture or to sell at retail alcoholic  
 25 beverages of any kind; or

26 (B) any other permit to wholesale alcoholic beverages of any  
 27 kind.

28 (b) A person who knowingly or intentionally violates this section  
 29 commits a Class B misdemeanor.

30 **(c) This section does not prohibit the holder of a beer**  
 31 **wholesaler's permit from wholesaling liquor under IC 7.1-3-3-5.5.**

32 SECTION 13. IC 7.1-5-9-6, AS AMENDED BY P.L.79-2015,  
 33 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34 JULY 1, 2016]: Sec. 6. (a) It is unlawful for the holder of a distiller's,  
 35 rectifier's, or liquor wholesaler's permit to have an interest in a beer  
 36 permit of any type under this title. This section does not apply to **the**  
 37 **following:**

38 (1) The holder of an artisan distiller's permit that has an interest  
 39 in a brewer's permit issued under IC 7.1-3-2-2(b).

40 **(2) The holder of a beer wholesaler's permit that wholesales**  
 41 **liquor under IC 7.1-3-3-5.5.**

42 **(3) The holder of a liquor wholesaler's permit that wholesales**



1           **beer under IC 7.1-3-8-3.5.**  
2           (b) A person who knowingly or intentionally violates this section  
3           commits a Class B misdemeanor.  
4           SECTION 14. IC 35-52-7-30.5 IS ADDED TO THE INDIANA  
5           CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
6           [EFFECTIVE JULY 1, 2016]: **Sec. 30.5. IC 7.1-5-5-9.5 defines a**  
7           **crime concerning wholesaling.**

